



AUG 28 2008

RSL-2008-06

MEMORANDUM FOR: TO ASSISTANT REGIONAL ADMINISTRATORS, F  
REGIONAL REALTY SERVICES OFFICERS

FROM: SAMUEL MORRIS  
ASSISTANT COMMISSIONER FOR OFFICE OF  
REAL ESTATE ACQUISITION – PR

SUBJECT: Procedures for FEMA Emergency and Disaster Leases

1. Purpose. This Realty Services Letter establishes procedures for the acquisition of leasehold interests in real property for the Federal Emergency Management Agency (FEMA) in response to declared emergencies.
2. Background.
  - a. When the President issues a disaster declaration, representatives of GSA, FEMA, and other agencies deploy to the affected area. In accordance with the GSA/FEMA Memorandum of Agreement dated June **18,2007** and Emergency Support Function #7 of the National Response Framework, GSA must provide contracting support services to FEMA consistent with mission assignments and tasks issued by FEMA.
  - b. These procedures outline some of the differences between our standard leasing process and the FEMA emergency and disaster leasing process.
3. Effective Date/Expiration Date. These instructions are effective immediately and will expire in 5 years, unless modified, extended, or canceled earlier.
4. Cancellation. None.
5. Applicability. This RSL applies to all real property leasing activities for FEMA in response to declared emergencies.
6. Instructions/Procedures. Instructions and procedures are attached. MOA's referenced herein are included on the Office of Real Estate Acquisition website.
  - a. Attachment 1 – FEMA Emergency and Disaster Leasing Process
  - b. Attachment 2 – Class Justification for Other than Full and Open Competition for Acquisitions of Space and Related Services to Support Federal Agencies Acting in Response to Emergencies OR Major Disaster Situations As Herein Specified
  - c. Attachment 3 – Memorandum of Agreement between DHSIFEMA and GSA, dated June **18,2007**.
  - d. Attachment 4 – Memorandum of Agreement between DHSIFEMA and DHSIICEIFPS, dated April **2, 2008**.

## FEMA Emergency and Disaster Leasing Process

### 1. Presidential Disaster Declaration.

- a. When the President issues a disaster declaration, representatives of GSA, FEMA, and other agencies deploy to the affected area. In accordance with the GSA/FEMA Memorandum of Agreement dated June 18, 2007 (Attachment 3), and Emergency Support Function #7 of the National Response Framework, GSA must provide contracting support services to FEMA consistent with mission assignments and tasks issued by FEMA.
- b. GSA regional managers will appoint a GSA coordinator to work with FEMA on all GSA activities related to disasters. Only GSA's coordinator or designee may accept mission assignments and tasks from FEMA.
- c. This RSL states GSA's standard procedures unless otherwise directed and changed in writing at the local command level or when deemed not to meet FEMA's operational and programmatic requirements in its response to the Presidential Emergency Declaration.

### 2. Leasing Authorities.

- a. Pursuant to 40 U.S.C. § 585, GSA may enter into a lease for the accommodation of a federal agency in buildings or improvements for a term of up to 20 years. Unimproved land is not covered under 40 U.S.C. §585 and GSA may only lease unimproved land for terms up to 1 year, pursuant to 40 U.S.C. § 581(c). Unimproved land is completely vacant land with no development. Examples of improvements include buildings, pavement, or utilities, either existing or to be provided by the Lessor. For the purposes of leasing authority, the improvements must facilitate occupancy. A lease for unimproved land may contain yearly renewal options to be exercised at the Government's discretion.
- b. The Contracting Officer shall immediately notify Central Office and the regional Portfolio office of any emergency leases that exceed prospectus limitations prior to the award of such a lease.

### 3. GSA Action Requested.

- a. FEMA will submit a Mission Assignment or task to the Emergency Support Function 7 leader (GSA's coordinator or designee) at the Regional Response Coordination Center or the Joint Field Office. Generally, FEMA requests for supplies, space or services will be submitted on a FEMA Form 90-136, *Action Request Form*, or other appropriate and approved tasking document.
- b. The form must have been approved by the appropriate FEMA Emergency Response Team Operations Section Chief or Acting Chief and a FEMA Comptroller/Finance Section funding official.
- c. The form must include the following information, at a minimum, in the *Justification/Statement of Work*:

- i. FEMA tracking number,
- ii. FEMA contact and phone number,
- iii. Type of space required (e.g., warehouse, office, land),
- iv. Related security requirements,
- v. Approximate amount of space required,
- vi. Nature of occupancy (e.g., Joint Field Office, Disaster Recovery Center, warehouse, travel trailer staging area),
- vii. Term (months or years), and
- viii. Desired location (city or county and state).

4. Request Transmitted to Realty Specialist.

- a. GSA's coordinator will forward the request form to the GSA realty services (RS) coordinator for the affected location who will then initiate lease actions. GSA realty specialists must not initiate leasing actions based on a verbal request and must not accept forms directly from FEMA.
- b. The RS coordinator must maintain a copy for tracking and assign the project to the appropriate RS contracting officer (RS/CO).

5. FEMA Consultation and Market Survey.

- a. The RS/CO must contact the FEMA representative to obtain complete information on the requirement and initiate a market survey to locate potential acceptable properties. In many cases, FEMA will identify specific locations on the request form along with the name and telephone number of the owners. FEMA often requests a specific property because of the need to be housed in a specific area, and the FEMA team has surveyed the area for sources. The RS/CO must also use sources such as internal contacts, current Lessors, area realtors, and onsite market surveys with FEMA to locate space. RS/COs must document the availability of sources and place the documentation in the permanent file. See paragraph 7 for information and limitations on the class justification for other than full and open competition (OTFO) for emergency leases for responders. If the class OTFO does not fit the facts then a separate OTFO must be prepared.
- b. The RS/CO should coordinate with the FEMA representative regarding the provision of law enforcement and security services provided through the Federal Protective Service (FPS) prior to the market survey. FPS services for emergency leases will be provided in accordance with provisions in the Memorandum of Agreement between DHS-FEMA and FPS (attachment 4 of this RSL). FPS should be included on the market survey to the extent practicable. The RS/CO must notify FEMA of apparent security deficiencies at sites surveyed.

6. FPS services and fees related to FEMA emergency leases

- a. For Stafford Act Emergency Leases, FPS services provided directly to FEMA are governed by the guidelines set forth in the joint DHS/FEMA -ICE/FPS MOA, dated April 2, 2008 (Attachment 4).

- b. FPS services provided for leases that were initially Stafford Act emergency leases, but then assume standard GSA reimbursable billing via an OA (in accordance with the provisions of paragraph 20 of this RSL Attachment 1) must follow the established GSA – FPS protocols for FPS service provision and fee reimbursement.
7. Class OTFOs. The Federal Acquisition Regulation authorizes Class Justifications for Other than Full and Open Competition (OTFO) in support of emergency situations. Such OTFOs are typically approved when the need for a group of properties is of such an unusual and compelling urgency that the Government would be seriously injured unless the number of solicited sources is limited. One or more OTFOs for different types of leases may be in effect at any one time for RS/COs to reference. RS/COs may sign leases while the class OTFOs, based on the unusual and compelling urgency of the situation, are pending approval.
- a. The Commissioner signed a GSA *Class Justification for Other than Full and Open Competition for Acquisitions of Space and Related Services to Support Federal Agencies Acting in Response to Emergencies OR Major Disaster Situations As Herein Specified* on November 5, 1992. The Justification is still valid for leases we do for FEMA and other agencies responding to a disaster. This justification must not be used for leases to provide replacement space, either temporary or permanent, for displaced agencies or space for displaced citizens. A copy of this justification follows as Attachment 2.
  - b. The RS/CO must include a certification in the lease contract file when relying upon the 1992 justification. Certification language is on the last page of the justification. It says in part, "The Contracting Officer anticipates being able to negotiate a fair and reasonable price consistent with market conditions and the Government's requirements." The RS/CO must document the agreed-upon price in relation to the current market as part of the certification, recognizing that market conditions for these leases may be considerably different than the market conditions prior to the disaster.
8. Term.
- a. FEMA will have included the required lease term on the request form. If the lease is for unimproved land, GSA authority limits lease terms to 1 year; however, the RS/CO may add as many option years as appropriate. If the lease is for a building or for land with improvements, the term may be for up to 20 years.
  - b. Under the Stafford Act, FEMA has authority to provide direct temporary housing assistance to individuals and households displaced as a result of disasters. That includes providing temporary trailer homes, etc. That authority necessarily includes the authority to lease land and property upon which to place the temporary housing. FEMA's authority is 18-month authority, so upon FEMA's delegation to GSA, the RS/CO will have authority to enter into leases for unimproved land for firm terms up to 18 months.

9. Negotiations.

- a. The RS/CO must contact the owner(s) and conduct negotiations.
- b. FEMA has agreed to instruct its contractors and agents to refrain from engaging in substantive negotiations or discussions with prospective Lessors regarding terms and conditions, including proposed pricing, when the lease is to be entered into by GSA. The RS/CO retains full responsibility and authority for negotiating lease terms and must not yield to pressures from any level or source to relinquish his or her responsibility to due diligence, including determinations of fair and reasonable pricing. The RS/CO will consult the Office of General Counsel for support as necessary.
- c. Fair and Reasonable Rates. The RS/CO must make determinations as to fair and reasonable rates. This can be accomplished in various ways depending on the circumstances and the RS/CO's knowledge of the market.
  - i. For leased space, the RS/CO must employ standard leasing protocols in making a fair and reasonable rate determination.
  - ii. Leased Land.
    - (a) The RS/CO should compare offered land rents to rental rates for land having the same or a similar highest and best use to the land they expect to lease. That is, retail land rental rates for retail oriented land, industrial land rental rates for industrial land, agricultural land rental rates for use of agricultural land for such as pasture and vacant unimproved lands, fields with crops growing, and so forth.
    - (b) Consideration of the land comparables to be used should be given to the amenities present at the site GSA intends to lease such as zoning, land with active businesses on site, on and off-site pavement and other site amenities, utilities that are in place, and other infrastructural improvements. Where offered land rents mandate GSA reimburse the offeror for any cost or service in addition to the offered land rental rate, comparison with land comparables or other reasonable supporting data must be provided to adequately account for these additional costs.
    - (c) Consideration of the local market conditions and circumstances after the disaster may be considered in determining fair and reasonable pricing.
    - (d) When the value of land and rental rates for land are not reasonably obvious or readily supportable, National Office strongly advises the RS/CO to consult with GSA Regional appraisers or other local land-market experts (real estate brokers, auctioneers, tax assessors and real estate appraisers) to determine the market value and adequate rates of return on land for determining reasonable land rental rates, and utilize all available other resources (to include local and regional published data) in making such a determination.
    - (e) Regions should make every reasonable effort to make appraisal resources available to the RS/CO, including available appraisal staff, land valuation details, and other Portfolio experts, to assist the RS/CO in making such determinations for land leases.
  - iii. Renewal Options. When the RS/CO elects to exercise a lease renewal option in accordance with paragraph 8a of this attachment, the RS/CO

should reevaluate market conditions to determine if the option rate is a fair and reasonable rate. Market conditions under disaster settings can change rapidly. It is suggested that on the 9-month anniversary of the land lease, the RS/CO shall consult with the Regional appraiser regarding market conditions and market data before exercising a renewal option. The appraiser can advise on the need for an appraisal to support renegotiation of the lease rate if market conditions warrant.

- iv. The final responsibility and determination of fair and reasonable rates for these emergency situations will be at the discretion of the RS/CO. The RS/CO must document the file on how this determination was made.

10. Regional Management Control. National Office recommends that the regions establish an informal pricing consultation process prior to award to encourage RS/CO consulting with a peer or higher level associate who is not involved in the particular acquisition. Documentation may be informal.
11. Condemnation. If a fair and reasonable price consistent with current market conditions cannot be negotiated, it may be necessary for the Government to condemn the leasehold interest. In such situations the RS/CO must consult with GSA Office of General Counsel at the earliest possible time.
12. Environmental/NEPA. GSA is the acquisition agency responsible and will lead, unless otherwise agreed to by FEMA, in addressing environmental issues, including performing National Environmental Policy Act (NEPA) analyses as applicable. FEMA will serve as a cooperating agency. To the maximum extent practicable, consistent with the GSA NEPA Desk Guide, rely on categorical exclusions or environment assessments and findings of no significant impact for the proposed leasing action. If an environmental assessment or environmental impact statement is necessary coordinate with FEMA as required.
  - a. In every acquisition, the RS/CO must forward all NEPA documentation received to the Office of General Counsel assigned to the FEMA response team for review. The RS/CO must also consult with regional environmental program officials to assist in the reviews. If a concern is raised in this review, reviewers must consult with FEMA and/or PBS national environmental program officials for resolution.
  - b. The RS/CO must include a copy of the final NEPA findings, analysis, and concurrence in the lease file.
13. Occupancy Agreements. GSA and FEMA have agreed not to require Occupancy Agreements for emergency leases that will be directly billed to FEMA. The RS/CO must advise and consult with FEMA throughout the process regarding available space for lease and anticipated costs. When a FEMA emergency lease requirement can be filled in vacant existing owned or leased space, an Occupancy Agreement will be required, and standard pricing policies apply. In such instances, the standard FEMA AB code should be used for STAR project purposes (AB code 7060 **must not** be used in those instances). Further, standard DHS-FPS security fees shall also apply.

14. Minimum Content of Emergency Lease Contracts.

- a. The RS/CO must use a Standard Form 2, *U.S. Government Lease for Real Property*; or GSA Form 3626, *US Government Lease for Real Property (Short Form)*; a lease rider; a GSA Form 3518, *Representations and Certifications*; and GSA Form 3517, *General Clauses*, in emergency leases and include the full text GSA Form 3516A, *Solicitation Provisions*, in solicitations.
- b. If the full text of standard SFO conditions and performance requirements are not incorporated, leases must, at a minimum, require –
  - i. A Certificate of Occupancy, or equivalent as stated in applicable sections of the SFO.
  - ii. Fire and life safety compliance, in accordance with State and Local codes, and applicable sections of the SFO.
  - iii. Accessibility compliance, in accordance with ABAAS (Architectural Barriers Act Accessibility Standards) requirements, and applicable sections of the SFO.
  - iv. OSHA, Asbestos and other environmental requirements, in accordance with State and Local codes, and applicable sections of the SFO.
  - v. Services, utilities, and maintenance.

These minimum conditions and performance requirements are stated in the Standard Conditions and Requirements section of the GSA Form 3626, *U.S. Government Lease for Real Property (Short Form)*. The text may be incorporated directly from the GSA Form 3626.

- c. When the lease cost will not exceed the Simplified Lease Acquisition Threshold for space in a building, the RS/CO may consider use of a GSA Form 3626 in place of the SF 2.
- d. Central Contractor Registration is not required for emergency leases, (FAR § 4.1102 (3) (ii)), but see paragraph 20 of this RSL for CCR treatment should the lease become a longer term need.

15. Request for FEMA Approval. After conducting negotiations, the RS/CO must provide a cost estimate to the GSA's coordinator referencing the FEMA request form action number. GSA's coordinator will request that FEMA develop a corresponding FEMA Form 40-1, *Requisition and Commitment for Services and Supplies*, approving the proposed lease. GSA will not accept the form without a funds citation for payment and a name in the funds certification box.

16. Award. The RS/CO may award the lease when the Form 40-1 is received with the funding code and contract number.

17. Lease Administration and Lease Management.

- a. The RS/CO must include the FEMA Procurement Instrument Identifier (PIID) number, as issued on an approved FEMA 40-1, along with a regionally issued GSA lease number on emergency leases. If any Stafford Act emergency leases will transition to GSA billing in accordance with paragraph 20 below, the existing Lease number will be retained, however other project information must be updated accordingly (ie: STAR, New AB Code, Signed OA, etc).

- b. GSA Property Management will perform lease administration and lease management for FEMA emergency leases. The GSA contracting officer may designate qualified and trained FEMA personnel as COR's or COTR's for specifically enumerated duties under a particular lease. In such cases GSA retains the contract administration responsibilities unless specifically delegated upon request. See the DHS/FEMA, GSA MOU, section IV, A.7, and B.8 and 9.
- c. With specific respect to leasehold interests in land for FEMA, GSA should not assume any responsibility related to the use, management, operation demobilization of facilities and functions related to the leased property, including but not limited to: providing site infrastructure, site management, repair and replacement of facilities, social services, decommissioning and demobilization requirements, removal of improvements, and site restoration requirements.

18. Other Administrative Matters.

- a. The RS/CO must keep a log of regular and overtime hours and expenses in support of projects for reporting to GSA's coordinator as requested.
- b. Property managers must keep a log of regular and overtime hours and expenses in support of lease administration for all GSA emergency leases.
- c. FPDS. FEMA emergency leases must be reported by GSA in the Federal Procurement Data System (FPDS), except for any FPDS entries required to be made after contract administration has been delegated to FEMA for a particular lease or leases. All information reported by GSA into FPDS shall be obtained through STAR.
- d. Lease Files. The region geographically containing the declared disaster area must maintain all original lease documents and pre-award documentation, and input this documentation into eLease for recordkeeping purposes. If an RS/CO is deployed from another region to work on leases during disaster recovery, the deployed RS/CO must consult with the affected regional managers to arrange for the proper assignment and physical transfer of those leases and project files to an RS/CO assigned to the affected region. File retention and disposal will be according to standard schedules for GSA leases.
- c. STAR Records. PBS has identified a unique AB Code for FEMA Stafford Act emergency leases, which is **7060**. This unique code will simplify recordkeeping and reporting. All FEMA emergency leases shall be entered into STAR according to standard lease input procedures. Since CCR registration is not required for emergency Stafford Act leases, and STAR will require an input for CCR information; use of zero- fill (0) for those fields is suggested for consistency. In instances where a Stafford Act emergency lease transfers to standard GSA OA billing, a new STAR project should be initiated, with the standard FEMA AB Code used, BA-53 Certification of Funds obtained, along with a signed OA from FEMA.
- d. The RS/CO must transmit a complete copy of the lease contract file to FEMA.

19. Additional Management Controls. GSA National Office will maintain electronic copies of this RSL or successor documents on the Realty Policy page of GSA



InSite. FEMA forms and GSA lease templates, delegations of authority, and other directives and resource documents will also be maintained.

20. Contract Payments. For real property leases FEMA will initially be responsible for making timely payments to the Lessor. Under this "direct billing" approach, GSA will utilize FEMA funding codes/citations to support lease awards, and such leases will instruct Lessors to bill FEMA directly. No later than six (6) months following a lease award, FEMA, in consultation with GSA, will determine whether a given lease should continue to utilize the "direct billing" approach or be converted to the "reimbursable billing" approach. See the DHS/FEMA, GSA MOU, section VI for details on Contract Payment and Reimbursement.
- a. If FEMA decides to keep the lease for an extended term, they must provide a new or amended FEMA Form 40-1 prior to the RS/CO extending the lease, unless the original Form 40-1 covers a longer term.
  - b. If it is determined to convert a given lease to the reimbursable approach (OA billing) the RS/CO must issue a supplemental lease agreement amending the existing lease to direct the lessor to bill GSA thereafter. Subsequent non-Stafford Act lease actions will be subject to standard GSA leasing procedures. In addition, FEMA will be required to sign an Occupancy Agreement (OA), as set forth in paragraph c below, prior to GSA issuing an SLA converting a lease to reimbursable billing.
  - c. FEMA will sign an Occupancy Agreement enumerating all terms, costs, and conditions for the lease location. Conventional pricing policy principles will apply when determining whether the space is cancellable or non-cancellable (see also Pricing Policy Desk Guide Chapter 3.2.10, PBS Fee). For land leases, the Contracting Officer should also apply pricing policy principles in determining the whether the OA should be cancellable or non-cancellable, and exercise professional discretion in application of such a determination accordingly.
  - d. The RS/CO must require the lessor to register in the Central Contractor Registration (CCR) system. Registration must be completed no later than 60 days after the execution date of the SLA directing the Lessor to bill GSA.

GENERAL SERVICES ADMINISTRATION CLASS JUSTIFICATION FOR **OTHER**  
THAN **FULL** AND OPEN COMPETITION

ACQUISITIONS OF SPACE AND RELATED SERVICES TO SUPPORT **FEDERAL**  
AGENCIES ACTING IN RESPONSE TO EMERGENCIES OR MAJOR DISASTER  
SITUATIONS AS HEREIN SPECIFIED.

Identification and description of action being approved,

This class justification for other than full and open competition is for use by the General Services **Administration's (GSA's)** contracting activities in **the** acquisition of space and related services for the Federal Emergency Management Agency (FEMA) and other Federal agencies responding to emergency situations and major disasters as specified below. This class justification is applicable to the following emergencies:

a. National emergencies declared by the President under applicable provisions of law, including, but not limited to, the Robert T. **Stafford** Disaster Relief and Emergency Assistance Act of 1988 (P. L. 100-707);

b. Emergencies declared by responding **Federal** agencies' pursuant to statutorily authorized emergency plans or other applicable provisions of **law**; and

c. **Emergencies** of a **health/safety** or other (**HSO**) nature which so adversely impact the mission of an agency in a Government-owned or leased building as to necessitate the **agency's** expeditious relocation therefrom.'

Description of supplies or services required.

GSA Order **ADM P 2400.16A** dated January 8, 1992, entitled Domestic Emergency Assistance Program, establishes **GSA's** overall guidance for providing assistance to Federal agencies in emergencies. The Order states that GSA "must ensure that the requesting agency is provided space that meets its needs," and "**other** services currently provided to the Federal establishment."

Identification of statutory **authority**.

Section **303(c)(2)** of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. **253(c)(2)**), provides for contracting without full and open competition when there is an unusual and compelling urgency.

Demonstration that the acquisition requires use of the authority cited.

Pursuant to the authority and **responsibilities** contained in the Federal Property and Administrative **Services** Act of 1949, as amended, GSA is often called upon to provide work space and related support services to Federal agencies in emergency situations. The need to provide such work **space and** services in support of disaster relief efforts is of unusual **and** compelling urgency, and any delay will seriously harm a critical Government program and the recipients of Federal assistance. This class justification is applicable only to individual acquisitions of **work** space and related supporting services provided to Federal agencies in response to the emergency or major disaster situations specified in the first paragraph of this Justification for Other Than Full and Open Competition.

Description of efforts to obtain as many offers as practicable.

A market survey shall be conducted and competition shall be solicited to the maximum extent possible from as many potential sources as is practicable, consistent with the **circumstances** of the particular emergency.

Determination that the anticipated cost will be fair and reasonable.

The Government anticipates being able to negotiate a fair and reasonable price, taking into account market conditions existing at the time of acquisition.

Description of **the** market survey conducted.

It is impossible to identify sources capable of providing space for emergency or disaster relief in advance of the determination of individual need. As the need for space arises, a market survey will be conducted. **All** potential sources which can be located within the timeframe, and which can provide habitable space suitable for the needs of the **responding** agency, will be solicited.

Other facts supporting the use of other than full and open competition.

None.

List of sources that expressed an interest in the acquisition.

Not applicable.

Statement of actions to overcome barriers to competition.

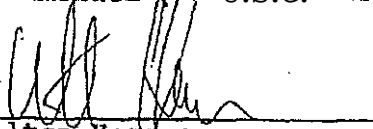
Under the circumstances described herein, there are no actions that the agency can take to overcome the barriers to full and open competition.

Contracting officer certification.

This class justification may be used by GSA contracting activities only when, with respect to each proposed lease contracting action taken pursuant to this **class** justification, the contracting officer executes and includes in the appropriate lease contract file the following certification:

"I certify that, to the **best of** my knowledge and belief, the requirement for space falls **within the** scope and applicability of the class justification for other than full and open competition for the acquisition of work space and related supporting services in response to emergencies or major disaster **situations** specified in the first **paragraph** of the class justification for other than full and open competition, entitled Identification and Description of Action Being Approved. The Contracting Officer anticipates **being** able to negotiate a fair and reasonable price consistent with market **conditions** and the Government's requirements."

This **class** justification for other than full and open competition is hereby made and approved in accordance with Section **303(c)(2)** of the **Federal Property** and Administrative Services Act of 1949, as amended (41 U.S.C. 253(c)(2)).


  
Milton Herndon  
Commissioner  
Public Buildings Service

Date: NOV 5 1992


**CONCURRENCE:**

  
Arthur E. Ronkovich  
Agency Competition Advocate

Reviewed for Legal Sufficiency:

  
Melville H. Valkenburg  
Associate General Counsel  
Real Property Division

Approved:

  
Richard H. Hopf, III  
Associate Administrator  
for Acquisition Policy

**MEMORANDUM OF AGREEMENT  
BETWEEN THE  
DEPARTMENT OF HOMELAND SECURITY AND THE  
GENERAL SERVICES ADMINISTRATION**

**ARTICLE I – PARTIES AND PURPOSE**

This Memorandum of Agreement ("MOA" or "Agreement") is entered into by and between the Federal Emergency Management Agency ("FEMA"), Department of Homeland Security, and the General Services Administration ("GSA"), (collectively, "the Parties") to establish a framework for the provision of resource support and other real and personal property and non-personal services (collectively, "supplies, space or services") by GSA pursuant to Emergency Support Function #7 ("ESF-7") and other provisions of the National Response Plan ("NRP").

This Agreement is intended to improve emergency and disaster response efforts in the following primary areas:

1. Ordering and provision of supplies, services or space;
2. Contract administration and support;
3. Payment and reimbursement for supplies, services, or space;
4. Coordination between the Parties; and
5. Dispute resolution.

This Agreement applies to GSA supplies, space or services provided to FEMA pursuant to Mission Assignments issued by FEMA. Pursuant to 44 C.F.R. §206.208(d), Mission Assignments generally remain active for a 60 day period unless extended. Supplies, space or services provided to FEMA following expiration or conclusion of a Mission Assignment are not subject to this Agreement and shall be provided by GSA consistent with Article IV.C below.

This Agreement is not intended to address FEMA disaster preparedness or recovery needs after expiration of a Mission Assignment. However, GSA will provide supplies, space or services to FEMA for disaster preparedness and recovery needs to the maximum extent available under existing GSA authorities and normal agency ordering and payment procedures.

**ARTICLE II - AUTHORITY**

Pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121 et seq.) ("Stafford Act"), Executive Order 12148, regulations at 44 C.F.R. Part 206, and the NRP, among other authorities, FEMA is the primary agency responsible for coordination of Federal disaster relief, emergency assistance and emergency preparedness. GSA is the Primary Agency responsible for providing Resource Support under ESF-7 of the NRP.

This Agreement is entered into pursuant to and in furtherance of the above referenced authorities, including sections 402, 403 and 502 of the Stafford Act (42 U.S.C. §§5170a, 5170b, and 5192).

### **ARTICLE III - SCOPE**

GSA shall provide FEMA, upon receipt of a specific Mission Assignment, with any supplies, space or services that GSA may provide to Federal agencies. (For purposes of this Agreement, a Mission Assignment includes an Action Request Form (ARF), Task Order, or other tasking document approved and issued by FEMA to GSA under a Mission Assignment.) The supplies, space or services to be provided by GSA include, but are not limited to, the following:

- Delivery of existing and available supplies and services from GSA's Office of General Supplies and Services;
- Access to GSA-operated Governmentwide Acquisition Contracts ("GWACs");
- Establishment of Blanket Purchase Agreements ("BPAs");
- Assisted Acquisition Services to procure supplies or services through open market procurements or competitive Multiple Award Schedule purchases;
- Lease/Purchase of Motor Vehicles;
- Other Assisted Acquisition Services to procure supplies and services from existing contract vehicles;
- Assignment of existing Federally owned or controlled space; and
- Acquisition of leasehold or other interests in real property.

### **ARTICLE IV – SPECIFIC RESPONSIBILITIES OF THE PARTIES**

#### **A. Responsibilities of GSA. GSA will:**

1. Provide FEMA with supplies, space or services in accordance with Mission Assignments issued by FEMA.
2. Identify and assign an adequate number of qualified and trained GSA personnel to perform required tasks, including designation of ESF-7 Leaders who will be responsible for coordinating GSA actions on Action Request Forms submitted by FEMA.
3. Meet FEMA's needs through appropriate methods, including utilization of contractors.
4. Ensure that any special needs arising from FEMA's extended hours of duty and security requirements at its facilities are specifically addressed in leases and other agreements.
5. Maintain adequate records and reports as described in Article VII.
6. In consultation with FEMA, provide qualified and trained, or designate qualified and trained FEMA personnel as, Contracting Officer Representatives (CORs) and Contracting Officer Technical Representatives (COTRs), and maintain contact and coordinate closely with such FEMA CORs and COTRs, for purposes of contract administration, including, as appropriate, inspection, acceptance, operation, use, management and maintenance of supplies, space or services provided by GSA contractors.

7. Retain general contract administration responsibility for agreements entered into by GSA pursuant to a Mission Assignment. Contract administration responsibilities include maintaining master contract file documentation, making payments (except where FEMA is responsible for making payment pursuant to Article VI, below), processing contract modifications, issuing final decisions, terminating agreements, handling claims or appeals, and performing contract close-out. Upon request of FEMA, GSA will transfer or delegate the administration of contracts, leases or other agreements entered into by GSA to FEMA, except GSA Office of General Supplies and Services and GSA Office of Motor Vehicle Management contracts, which will be retained by GSA and not be subject to delegation or transfer.

8. Where GSA is responsible for doing so, make timely payments to contractors or vendors and be responsible for any Prompt Payment Act penalties arising out of GSA's failure to make timely payment to such contractors or vendors.

**B. FEMA Responsibilities. FEMA will:**

1. Notify GSA of activations of NRP interagency entities if FEMA anticipates that GSA will be called upon to participate or provide support.

2. Submit requests for supplies, space or services in writing using an Action Request Form, FEMA Form 90-136 ("ARF"), Task Order, or other appropriate form or instrument. All ARFs, Task Orders, or similar instruments will be approved by the appropriate FEMA Emergency Response Team Operations Section Chief or Acting Operations Section Chief (as required by National Incident Management System ("NIMS")) or other appropriate FEMA official. FEMA will order supplies or services from the GSA Office of General Supplies and Services and the GSA Office of Motor Vehicle Management using GSA's designated ordering systems.

3. Subject to VI.B.2 below, provide GSA with a valid funding commitment (FEMA Form 40-1) or other appropriate instrument (i.e. Reimbursable Work Authorization) prior to GSA's award of a contract, task order, lease, or other binding agreement pursuant to a Mission Assignment or other appropriate form or instrument. A funding commitment will contain a FEMA- issued "PIID" number, the amount of funds committed, potential sources for the required supplies, space or services (if known), a delivery address, and the name of the FEMA Project Manager, any designated COR or COTR responsible for inspection, acceptance, operation, use, management and maintenance of the required supplies, space or services.

4. Provide GSA with reimbursement for reasonable and allocable costs incurred by GSA in connection with providing or arranging for the provision of supplies, space or services provided to FEMA under a Mission Assignment. Such reasonable and allocable costs shall include, but not be limited to, wages (regular, premium, and overtime pay), travel and per diem expenses of GSA employees, as well as facilities and contract costs incurred specifically to support GSA's actions.



5. Communicate any special needs arising from FEMA's extended hours of duty and security requirements at its facilities that need to be specifically addressed in leases and other agreements entered into by GSA.

6. Comply, and instruct its contractors to comply, with all terms and conditions of agreements entered into by GSA.

7. Where FEMA is responsible for doing so, make timely payments to contractors or vendors and be responsible for any Prompt Payment Act penalties arising out of FEMA's failure to make timely payment to such contractors/vendors.

8. Provide qualified and trained agency personnel to serve as CORs and COTRs for agreements entered into by GSA if necessary. FEMA CORs and COTRs will maintain contact and coordinate closely with GSA contracting officers to facilitate GSA's contract administration responsibilities hereunder.

9. In instances where FEMA personnel are designated as CORs or COTRs, be responsible for inspection, acceptance, operation, use, management and maintenance of supplies, space or services provided by GSA. COR or COTR duties will be specifically enumerated by the GSA contracting officer and generally will include performance of inspections, ensuring vendor or contractor compliance with contract requirements, and acceptance of deliverables. FEMA will provide GSA with such information, documentation, and other support necessary to enable GSA to perform its contract administration functions. FEMA will be responsible for any liabilities, including Prompt Payment Act penalties, arising out of FEMA's failure to perform its COR or COTR responsibilities in a timely manner so as to permit GSA to fulfill its contract administration functions.

10. Provide GSA with written notice as soon as possible regarding the planned cessation of GSA support activities under a Mission Assignment. The notice should include the planned closure date for space and other facilities provided by GSA in order to facilitate GSA's contract administration responsibilities.

C. Successor Agreements. Upon the expiration or conclusion of a Mission Assignment, FEMA will determine which supplies, space or services provided by GSA hereunder are still required, including support or other special requirements related to the utilization, donation or disposal of excess or surplus personal property, if any. GSA and FEMA will enter into successor agreements, where appropriate, with respect to such supplies, space or services on terms consistent with GSA's normal agency ordering and payment procedures. Upon request by FEMA, GSA will prepare a written transition plan designed to ensure that continued, uninterrupted supplies, space or services are provided to FEMA pending the formalization of a successor agreement. Any successor reimbursable agreement (e.g., an Interagency Agreement ("IA") or Reimbursable Work Agreement ("RWA")) will serve as the obligating document and, as a minimum, will include a description of the supplies, space or services to be provided; the source and amount of funding; the terms and conditions of the intergovernmental relationship (reimbursable rates, etc.); and such other background information as is necessary in connection

with the specific request. Where an RWA is utilized as the form of reimbursable agreement, all relevant funding/billing information on the RWA will be verified by FEMA. For any supplies and services billed by GSA to FEMA, FEMA's funding document must be used to clarify proper billing information.

D. Both agencies recognize and acknowledge that Mission Assignments issued by FEMA to GSA hereunder are of paramount importance and may involve the protection, saving or sustainment of lives and property. Both agencies agree to deploy and commit resources to meet FEMA needs as expeditiously as possible. The parties intend that this Agreement will assist each agency to act effectively and rapidly to deliver assistance essential to saving lives or protecting or preserving property or public health and safety in a natural disaster, act of terrorism, or other man-made disaster.

## **ARTICLE V – COMPETITION REQUIREMENTS**

All GSA procurement and acquisition activities shall comply with the Competition in Contracting Act and related regulations, including the Federal Acquisition Regulation and the General Services Administration Acquisition Manual, as well as section 307 of the Stafford Act to the extent practicable. It is GSA's policy to seek full and open competition when acquiring property or services. FEMA agrees to cooperate with GSA to structure GSA procurement actions undertaken pursuant to an ARF in a manner designed to achieve full and open competition to the maximum extent practicable. Where other than full and open competitive procedures are determined to be necessary to meet FEMA's needs in the timeframe required, FEMA agrees to provide GSA such backup documentation as GSA requires in order to support such actions. Where procurement actions are undertaken on the basis of "unusual and compelling urgency" pursuant to 41 U.S.C. §253(c)(2), FEMA agrees to cooperate with GSA in identifying maximum practicable competition under the circumstances. For contract actions entered into by GSA, GSA retains final authority to make determinations regarding the adequacy of competition and compliance with competition laws and regulations.

## **ARTICLE VI – BILLING, REIMBURSEMENT AND RECONCILIATION**

### **A. Contract Payments**

1. Except as provided below or as otherwise directed by FEMA, GSA will be responsible for making timely payments to vendors or contractors for contracts entered into by GSA hereunder. Under this "reimbursable billing" approach, GSA will utilize FEMA funding codes/citations to support contract awards and payment of costs; however, the vendor or contractor will bill GSA.

2. For real property leases or contracts--

a. FEMA will initially be responsible for making timely payments to the lessor. Under this "direct billing" approach, GSA will utilize FEMA funding codes/citations to support lease awards, and such leases will instruct lessors to bill FEMA directly.

b. No later than six (6) months following lease award, FEMA, in consultation with GSA, will determine whether a given lease should continue to utilize the "direct billing" approach or be converted to the "reimbursable billing" approach.

c. If it is determined to convert a given lease to the "reimbursable billing" approach, GSA will issue a supplemental lease agreement ("SLA") or other appropriate contract modification directing the lessor to bill GSA thereafter. GSA will continue to utilize FEMA funding codes/citations to support payment of lease costs, except as otherwise provided in IV.C above.

3. In situations where GSA delegates contract administration to FEMA (see Art. IV.A.7, above), the contract will be modified to provide for direct billing to FEMA for costs associated with the particular contract.

#### B. Reimbursement

1. Under either the direct or reimbursable billing approaches, FEMA will provide GSA with reimbursement for all reasonable and allocable costs incurred by GSA. Allocable costs are those incurred specifically for the contract(s) or services without regard to assessments or fees normally applicable under GSA services or programs. As previously noted, such costs shall include, but not be limited to, wages (regular, premium, and overtime pay), travel and per diem expenses of GSA employees, as well as facilities and contract costs incurred specifically to support GSA's actions.

2. All of FEMA's reimbursement obligations hereunder are subject to Sections 402 and 502 of the Stafford Act.

3. Upon issuance of a Mission Assignment to GSA, FEMA will provide GSA with a Reimbursable Work Authorization (RWA) in an amount agreed to by the agencies to cover GSA's expected costs of providing administrative overhead during the Mission Assignment. The RWA will allow GSA to obtain payment from FEMA through the Intra-Government Payment and Collection (IPAC) system.

4. All reimbursable billing under this Agreement shall be handled through the IPAC system. GSA shall provide as many of the following Treasury Fields for IPAC as are possible for a given IPAC transaction, depending on the GSA financial management system affected:

- ALC Transaction Contact (COTR/POC)
- Contact Phone
- Purchase Order Number (FEMA's document control number)
- Invoice Number
- Sender's Treasury Account Symbol
- Receiver's Department Code
- Obligating Document Number (FEMA's)
- Sender's SGL Transaction
- Transaction Description field should identify if advance or disbursement.

Subject to Article VI.C., FEMA will not charge back any funds as a result of any of the above-listed IPAC fields not being initially provided.

5. As part of, or in connection with, a reimbursable agreement, FEMA will provide a valid funding citation, an estimated amount for the supplies, space or services to be provided, the signature of an authorized FEMA official certifying and obligating funds, and a billing office address for GSA to which bills or invoices may be forwarded. GSA will presume that any validly issued and fully approved Mission Assignment from FEMA represents a bona fide need of FEMA for the supplies, space or services required. Where an RWA is utilized as the form of reimbursable agreement, an additional funding document is not required.

### **C. Reconciliation**

1. The Parties agree to promptly discuss and resolve issues and questions regarding payments. GSA will promptly initiate year-end and closeout adjustments, as appropriate, once final costs are known.

2. FEMA will provide GSA advance written notice of any proposed FEMA charge back of funds. GSA will have 30 days from receipt of any such notice to provide FEMA with information and supporting documentation to satisfy FEMA concerns regarding use of FEMA funding. If, following receipt of such information and supporting documentation, FEMA still intends to charge back the funds in question, and GSA does not agree to the charge back, the matter shall be handled in accordance with Article XI prior to any FEMA charge back.

3. Within ninety (90) calendar days of completing work related to a Mission Assignment, GSA will conduct an accounting to determine the reasonable and allocable costs (as described above) of the work. Within thirty (30) calendar days of completion of this accounting, GSA will authorize FEMA to deobligate any funds in excess of the reasonable and allocable costs as then known, or FEMA will provide any additional funds necessary to cover the costs as then known.

## **ARTICLE VII - RECORDKEEPING AND REPORTING**

A. GSA agrees to provide FEMA, upon request, with reports related to GSA actions taken in furtherance of a Mission Assignment. GSA's record keeping and reporting shall be sufficient for FEMA to meet its obligations under the Stafford Act and its implementing regulations, specifically including 44 C.F.R. §§ 206.13 and 206.16. In furtherance thereof, GSA agrees to maintain and provide information on all funds received, obligated and expended, as well as forecasts of future obligations and expenditures, related to Mission Assignments, Interagency Agreements, RWAs, or similar instruments.

B. As the awarding agency, GSA will be responsible for entering required contract data into the Federal Procurement Data System (FPDS) or any successor system, except for any FPDS entries required to be made after contract administration has been delegated to FEMA. In those instances, FEMA will be responsible for entering appropriate data in FPDS.

C. FEMA agrees to obtain GSA's concurrence on reporting required pursuant to a Mission Assignment, and otherwise minimize any special reporting requirements for support provided by GSA.

D. Both parties agree that records will be retained in compliance with National Archives and Records Administration guidelines.

#### **ARTICLE VIII - LIABILITY**

A. The Parties agree that they shall be and remain liable for the acts or omissions of their respective agency personnel acting within the scope of their employment, subject to the provisions of the Federal Tort Claims Act.

B. FEMA agrees to defend and be responsible for addressing claims, disputes, appeals and other legal actions that arise from actions of FEMA personnel, contractors and other agents. FEMA also will defend and address claims, disputes, appeals and other legal actions related to contracts for which contract administration has been delegated or otherwise transferred to FEMA with its consent.

C. GSA agrees to defend and address claims, disputes, appeals and other legal actions related to contracts awarded by GSA and for which GSA retains contract administration responsibility. However, FEMA agrees to cooperate and otherwise provide support to GSA related to defense of such claims, disputes and appeals. FEMA also agrees to remain financially responsible for any settlements, judgments or other monetary liabilities arising out of FEMA's use of supplies, space or services pursuant to contracts awarded by GSA. GSA agrees to consult with FEMA regarding defense of claims, disputes and appeals where FEMA has ultimate financial responsibility; however, GSA retains ultimate authority to direct the means and methods of how claims, disputes and appeals are handled.

E. Each party agrees to provide the other with prompt notice of any claim, dispute, appeal or other legal action submitted to the party for which the other is responsible under this Article.

#### **ARTICLE IX - INTERAGENCY COMMUNICATIONS**

A. National Points of Contact. To provide for consistent and effective communications between the agencies, each Party will name a primary Point of Contact ("POC") at the Agency Headquarters level to address matters relating to this Agreement.

B. Working Group. To provide for efficient implementation of and effective operations under this Agreement, the Parties agree to establish a bilateral working group to meet at least on an annual basis. Each Party agrees to appoint a senior level agency official to serve as a co-chair of the working group.

## **ARTICLE X- APPLICABLE LAWS**

Unless otherwise required by law, all supplies, space or services provided by GSA under this Agreement shall be governed by GSA's authorities, policies and procedures, any delegation of authority that exists from FEMA to GSA, Sections 402 and 502 of the Stafford Act, and 44 C.F.R. §206.8. FEMA agrees to cooperate with GSA in providing any delegations of authority that may be required in order for GSA to provide such supplies, space or services.

## **ARTICLE XI - DISPUTE RESOLUTION**

- A. The Parties intend that disputes regarding this Agreement, including any Mission Assignment, Interagency Agreement, RWA or other instrument issued hereunder, be resolved informally to the maximum extent practicable.
- B. Disputes or disagreements regarding a Mission Assignment, Interagency Agreement, RWA or other instrument shall be resolved in the first instance at the servicing level by the respective agency officials tasked with requesting, coordinating and providing supplies, space or services. The existence of any such dispute, and its resolution, shall be reported to the agency points of contact identified pursuant to Article IX. In the event any such dispute cannot be resolved at the servicing level, the dispute shall be elevated to the respective agency points of contact identified pursuant to Article IX for resolution.
- C. A dispute concerning the interpretation of the provisions of this MOA shall be resolved by the agency points of contact identified pursuant to Article IX.
- D. If a dispute cannot be resolved either at the servicing level or by the agency points of contact identified pursuant to Article IX, it shall be elevated to appropriate levels of each agency as identified by the respective agency point of contact.
- E. If a dispute cannot be resolved at the agency level, the Parties may jointly refer it for resolution to the Office of Management and Budget.
- F. The parties agree that, to the maximum extent practical, any dispute should not interfere or delay in the provision of disaster response services to FEMA hereunder.

## **ARTICLE XII - PUBLIC INFORMATION**

Justification and explanation of FEMA's programs before Congress, other agencies, departments, and offices of the Federal Executive Branch, the Judiciary, and the press shall be the responsibility of FEMA. GSA will provide, upon request, any assistance necessary to support FEMA's justification or explanations of FEMA's programs conducted under this Agreement. GSA may make public announcements and shall respond to inquiries relating to the procurement, contract award and contract administration functions for which GSA is responsible. FEMA and GSA each shall use their respective best efforts to give the other party advance notice before making any public statement regarding supplies, space or services requested or provided

pursuant to a Mission Assignment. GSA agrees to cooperate with FEMA in facilitating FEMA's response to inquiries or requests related to a Mission Assignment.

Each agency shall remain responsible for responding to requests for records submitted to that agency under the Freedom of Information Act (FOIA). However, the Parties agree to coordinate regarding any proposed FOIA response related to a Mission Assignment issued pursuant to the Stafford Act.

#### **ARTICLE XIII - MISCELLANEOUS**

A. Other Relationships or Obligations. This Agreement supersedes a Memorandum of Understanding between FEMA and GSA dated February 2, 1989 (the "1989 MOU"). Any Mission Assignment issued by FEMA under the Stafford Act or this Agreement after the effective date shall be governed by the terms of this Agreement and the specific Mission Assignment. FEMA taskings issued prior to the effective date of this Agreement are governed by the terms of the 1989 MOU or other agreements as may have been entered into between FEMA and GSA. Otherwise, this Agreement shall not affect any pre-existing or independent relationships or obligations between FEMA and GSA.

B. No Obligation of Funds. Nothing in this Agreement obligates funds of the Parties.

C. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed a duplicate original.

#### **ARTICLE XIV - AMENDMENT, MODIFICATION AND TERMINATION**

A. This Agreement may be modified or amended only by written, mutual agreement of the parties. Either party may terminate this Agreement by providing written notice to the other party's National Point of Contact by e-mail or facsimile transmission. The termination shall be effective upon the sixtieth calendar day following receipt of such notice, unless a later date is set forth. In the event of termination, FEMA shall be responsible for reasonable and allocable costs as described above that may have been incurred by GSA prior to termination.

B FEMA and GSA agree that the working group established under Article IX will review the terms of this MOA on an annual basis to determine whether any modifications to the terms and conditions stated herein are necessary.

#### **ARTICLE XV – NO RIGHTS CREATED IN THIRD PARTIES**

Nothing in this Agreement is intended or will be construed to create any rights or remedies for any third party, and no third party is intended to be a beneficiary of this Agreement.

**ARTICLE XVI - EFFECTIVE DATE**

This Agreement is effective upon the last date of signature by the Parties hereto.



R. David Paulison  
R. David Paulison  
Administrator  
Federal Emergency Management Agency  
U.S. Department of Homeland Security



Lurita A. Doan  
Lurita A. Doan  
Administrator  
U.S. General Services Administration

DATE: 6-12-07

DATE: 6-18-07



**ATTACHMENT A**

**POINTS OF CONTACT**

**GSA:**

Name: Richard A. Reed  
Title: Director, Office of Emergency Response and Recovery  
Address: 1800 F Street, N.W., Rm. 7224  
Washington, DC 20405  
Telephone: (202) 501-0012  
Fax: (202) 501-1439  
E-Mail: richard.a.reed@gsa.gov

**FEMA:**

Name: Deidre A. Lee  
Title: Director, Office of Management  
Address: 500 C Street, S.W., Room 707E  
Washington, DC 20472  
Telephone: (202) 646-3808  
Fax Number: (202) 646-3761  
E-Mail: Deidre.lee@dhs.gov



## **MEMORANDUM OF AGREEMENT**

BETWEEN THE  
THE U.S. DEPARTMENT OF HOMELAND SECURITY (DHS)  
FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)  
AND THE  
THE U.S. DEPARTMENT OF HOMELAND SECURITY  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT (ICE)  
FEDERAL PROTECTIVE SERVICE (FPS)

### **1. PARTIES**

The parties to this Memorandum of Agreement (MOA) are FEMA and FPS.

### **2. PURPOSE**

This Memorandum of Agreement (MOA) between the U.S. Department of Homeland Security's (DHS) Immigration and Customs Enforcement (ICE), Federal Protective Service (FPS) and the Federal Emergency Management Agency (FEMA) sets forth operational procedures and relationships by which the parties shall operate in providing law enforcement and security services at GSA or DHS leased, owned or occupied disaster facilities. This overarching MOA establishes a standard set of procedural arrangements for response and recovery operations between FEMA (the requesting agency) and FPS (the servicing agency).

### **3. AUTHORITY & REFERENCES**

- 3.1 Homeland Security Act of 2002, as amended, Pub. L. No. 107-296, 6 U.S.C. § 101, et seq.
- 3.2 DHS Memorandum from Michael Chertoff, Acquisition of Contract Security Guard Services, dated July 2, 2007
- 3.3 40 U.S.C. § 1315 - Law Enforcement Authority of Secretary of Homeland Security for Protection of Public Property; and FPS' annual appropriations provision authorizing FPS to receive reimbursement for the protection of federally-owned and leased building and for the operations of FPS. See e.g., Pub. L. No. 109-295, 120 Stat. 1355, 1361 (2006)
- 3.4 Charges for Space and Services, 40 U.S.C. 586(c); 41 C.F.R. 102-85.135
- 3.5 Robert T. Stafford Disaster Relief and Emergency Assistance Act, § 623, Use of Existing Facilities, 42 U.S.C. § 5197b.

- 3.6 Federal Management Regulation, 41 C.F.R. 102-74.15
- 3.7 DHS Delegation Number 7030.2 - Delegation of Authority to the Assistant Secretary for the Bureau of Immigration and Customs Enforcement
- 3.8 DHS Management Directive 0710.1 - Reimbursable Agreements
- 3.9 The National Response Plan, dated December 2004, as amended.
- 3.10 The Interagency Joint Field Operations (JFO) Standard Operating Procedure (SOP) v. 8.3
- 3.11 The Emergency Support Function (ESF) Operational Procedures for ESF 13
- 3.12 Mission Assignments In Federal Disaster Operations: Overview, November 1998
- 3.13 FPS Policy Directive FPS-07-005 *Agency Technical Representative Program*

#### 4. DEFINITIONS

- 4.1 Agency Technical Representative (ATR): The requesting agency's representative designated to assist the FPS Contracting Officer's Technical Representative with limited on-site contract and operational oversight.
- 4.2 Contracting Officer (CO): A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings. The term includes certain authorized representatives of the contracting officer acting within the limits of their authority as delegated by the contracting officer.
- 4.3 Contracting Officer's Technical Representative (COTR): An individual who has been designated in writing by the Contracting Officer to assist in the technical monitoring or administration of a contract.
- 4.4 Disaster: A disaster is an unexpected, catastrophic event requiring the response of local, state and federal disaster management personnel.
- 4.5 Disaster Facility: A disaster facility is any federally owned, leased, or occupied facility, property, or other federal asset used to prepare for, respond to, or recover from a disaster.
- 4.6 Emergency Response: Any occasion or instance for which, in the determination of the President, Federal assistance is needed to supplement state and local efforts and capabilities to save lives and to protect property and public health and safety, or to lessen or avert the threat of a catastrophe in any part to the United States.
- 4.7 Federal Coordinating Officer (FCO): When deployed to disasters, FCOs report to the FEMA Administrator and coordinate with and inform associated FEMA and/or DHS leadership of the status of the disaster on a continual basis. The FCO is responsible for coordinating the timely delivery of Federal disaster assistance resources and programs to the affected State and local governments, individual victims, and the private sector.
- 4.8 FEMA Security Cadre Manager: The FEMA official who has oversight responsibility for providing and determining security operations at disaster locations.

- 4.9 FEMA Acting Joint Field Office (JFO) Security Officer: The FEMA Security Manager designated in advance by the DHS Chief Security Officer (CSO) to coordinate among JFO-member agencies to develop a security plan and be responsible for the physical, information, and personnel security programs as provided by the JFO SOP.
- 4.10 Fixed Facility: A facility leased by GSA and occupied by FEMA for headquarters and regional operations.
- 4.11 FPS Disaster Liaison Officer (DLO): The FPS official who has overall responsibility for supporting FEMA Security operations at disaster locations.
- 4.12 FPS Acting Joint Field Office (JFO) Security Officer: FPS individual designated by the DHS Chief Security Officer (CSO) to coordinate among JFO member agencies to develop a security plan and be responsible for the physical, information, and personnel security programs as provided by the JFO SOP.
- 4.13 GSA Form 139 (GSA139), Record of Time of Arrival and Departure Contract Guard Duty Register: The required form on which Contract guards sign in and out when they report to work and when they complete their tour of duty.
- 4.14 GSA Form 2820 (GSA2820), Guard Contractor Inspection Report (Inspection Report): The primary security guard post inspection report used to monitor performance and compliance with guard contract provisions and requirements.
- 4.15 GSA Form 3155 (GSA3155): Offense/Incident Report: Offense/incident report to be used to record offenses and incidents occurring on property under the jurisdiction of FPS.
- 4.16 Joint Field Office (JFO): A temporary Federal facility established in a locality to provide a central point for Federal, State, local, and tribal executives with responsibility for incident oversight, direction, and/or assistance to effectively coordinate their respective and joint protection, prevention, preparedness, response, and recovery actions.
- 4.17 Long Term Recovery Office (LTRO): An office established by FEMA, including leased facilities and infrastructure, to support long-term or on-going recovery efforts.
- 4.18 Mission Assignment (MA): The vehicle used by DHS/FEMA to support Federal operations in a Stafford Act major disaster or emergency declaration. In exigent circumstances, MAs may be issued verbally by authorized FEMA officials followed with an e-mail verification from the requestor, which will suffice until a completed MA can be delivered to FPS.
- 4.19 Post Orders: A means, usually in writing, of providing the guard force with specific directions and instructions in order to perform specified duties and tasks for each post or post assignment.
- 4.20 Recovery Phase: For the purposes of this MOA, the recovery period begins after the response phase. However, the recovery phase may be initiated prior to MA expiration at the direction of FEMA leadership.

- 4.21 Response Phase: For the purpose of this MOA, the period immediately following a Presidentially declared major disaster or emergency during which Mission Assignments are issued and active; typically the period is 60 to 90 days but may extend up to 180 days.
- 4.22 Requesting/Receiving Agency: FEMA is the requesting agency for this agreement.
- 4.23 Servicing Agency: FPS is the servicing agency for this agreement.
- 4.24 Security Guard Operations Log: Post activity Log completed at each security post during security guard tour of duty.
- 4.25 Security Work Authorization (SWA): A reimbursable agreement that transfers funds from FEMA to FPS for requested security services. FPS will prepare SWAs for FEMA MAs.
- 4.26 Transitional Recovery Office (TRO): A temporary office established by FEMA, including leased facilities and infrastructure, to support specific recovery efforts.

## **5. ROLES AND RESPONSIBILITIES**

In addition to the roles and responsibilities generally described in the definitions above or elsewhere in this agreement, the following highlights certain overarching aspects of the respective roles and/or responsibilities of FEMA and FPS, and addresses the unique and critical aspects of the FEMA ATR and FPS COTR and CO roles.

- 5.1 FEMA: Nothing in this agreement will supersede FEMA's authority and responsibility. The responsibilities of FEMA are generally, but not limited to, as follows:
- Provide the designated Liaison Officers responsible for Response and Recovery communications between FEMA and FPS. FEMA will inform FPS of any changes to the designations in writing within 24 hours.
    - For Disaster Operations: Mr. Don Pope
    - For the Gulf Coast and LTROs and TROs: Mr. Larry Mazur
  - Annually plan and estimate, in coordination with FPS, the anticipated security services for all known LTROs and TROs no later than the end of August. Agreements reached on the estimated costs and service requirements will be used by both FEMA and FPS to budget accordingly and initiate the funding process in the subsequent fiscal year;
  - ATR appointments will be from the FEMA list of trained FEMA Security Managers. FPS will be informed of any changes to this appointment in writing within 24 hours;
  - Coordinate with FPS to ensure that security assessments for Disaster Facilities are conducted based on FEMA standards, policies, and practices applicable to performance at the disaster.

5.2 FEMA ATR: The roles and responsibilities of the ATR are generally, but not limited to, as follows:

- Coordinate all operational and administrative activities with the FPS COTR;
- Conduct the building and facility security risk assessments noted in 5.1 above and provide the detailed report to the FPS COTR;
- Prepare and submit post orders to the FPS COTR for all posts not less than 24 hours in advance of each post order and ensure that the post orders delineate locations where guards are required, hours (start/finish times) of service needed, and total duration (start/finish dates);
- Without changing contractual obligations, coordinate with the FPS COTR to prepare changes to post orders on the basis of the risk assessment and provide the updates for the post order to the FPS COTR within 24 hours of implementation;
- In the event of an emergency that would require the lateral movement of a contract guard from a previously established guard post, the FEMA ATR may temporarily reassign the contract guard to another location during the duration of the emergency. This reassignment will be reported to the FEMA Security Cadre Manager and the FPS COTR within 12 hours after the event. Such a move must not constitute a violation of any contractual agreement;
- Request through the FPS COTR temporary additional guard services required over and above those which are provided in the contract(s);
- Monitor and coordinate the SWA/MA to include post exhibit requirements, cost estimates and associated funding and coordinate approval through the appropriate FEMA representatives/authorities;
- Coordinate with and obtain support from the FEMA Office of Acquisition Management Representative as needed to define requirements and confirm cost estimates, seek acquisition-related advice, and assist with improving communications between FEMA and the FPS COTR and CO;
- Notify the FEMA Office of Acquisition representative of any deductions to contractor invoices made by FPS.
- Create and maintain a SWA/MA file that includes, at a minimum, the SWA/MA, copy of the contract/task order, any subsequent modification to these agreements, Cost Estimates, GSA Form 139s, Security Guard Operations Log, GSA Form 2820, GSA Form 3155;
- Monitor contract performance periods and expiration dates. For known and recurring requirements, work proactively and in a timely manner to initiate dialogue with the FPS COTR to provide all funding and requirements documentation in advance of contract expiration;

- Perform surveillance of the contract security guards while on duty to determine the adequacy of contractor performance in accordance with the terms and conditions of the Contract/Task Order; meet as necessary with the FPS COTR to discuss contractor performance;
- Coordinate with the FPS COTR to review all GSA Form 139s and Security Guard Operations Logs from the contractors in order to confirm the accuracy of estimated costs;
- Conduct audits and inspections utilizing GSA Form 2820 as needed to identify any instances of contractor violations of contract requirements; document findings on inspection reports utilizing GSA Form 2820 and provide weekly to the FPS COTR;
- In coordination with the FPS COTR, review the GSA Form 3155s to identify incidents that occurred during the month of performance and ensure that the FPS COTR seeks an appropriate corrective action.

5.3 FPS: Nothing in this agreement will supersede FPS' jurisdiction, authority and responsibility. The responsibilities of FPS are generally, but not limited to, as follows:

- Designate a Chief Inspector, Risk Management Division as the liaison officer responsible for communications between FPS District and Area Commanders and the FEMA Liaison Officers. FPS will inform FEMA of this appointment in writing within 24 hours. The FPS Liaison Officer has certain duties as described in sections 6 and 9 below;
- Support FEMA in its planning and budgeting activities by estimating in advance the impact of increases in State and local security certification requirements, wage determinations and changes in requirements based on the current building and facility security risk assessments provided by FEMA;
- Provide the FEMA Liaison Officer with any increases in the cost of services immediately upon identifying any such changes. In the event FEMA cannot fund such changes, coordinate with the FEMA Liaison Officer to develop a plan to reduce services or create cost savings through other efficiencies;
- In the event that FPS cannot provide the contract security guard services by the date and time required by FEMA (and FEMA has provided notice and funding commensurate with the given requirement), FPS will make every effort to provide security at FEMA's requested location by ensuring that FPS Uniformed Officers are present to perform security at that location. (See Section 6, Procedural Arrangements.)
- Maintain the files and documentation associated with the building and facility risk security assessments as provided by FEMA, and make this documentation available to FEMA as soon as needed, if appropriate, and no later than within one business day of a request;

- Be responsible for investigations associated with FPS contract security guard activities at FEMA owned or controlled properties as required and share current intelligence with the FEMA JFO Security Officer or the responsible FEMA Security Manager at the affected facility;
- Where applicable, provide all on-going and recurring alarm monitoring and dispatching;
- Ensure that all new FPS guard service contracts include the requirements of Homeland Security Presidential Directive 12 (HSPD-12);
- Ensure that all armed and uniformed security guard personnel meet State certification standards and are in compliance with the contract certification and training requirements;
- Ensure that all wage determination changes are enforced and appropriately addressed in each contract;
- Provide the Post Order Template to FEMA for developing post orders.

5.4 FPS Contracting Officer (CO): The roles and responsibilities of the FPS CO are, within his/her warrant authorities, generally but not limited to the following:

- Seek the support of the FEMA Liaison Officer or designated ATR to obtain additional information/clarification of service requirements, financial/funding status, invoice and/or performance concerns, etc.;
- Enter into and sign, on behalf of the government, all documents relating to contracting that obligate the government financially;
- Ensure that sufficient funds have been committed before obligating funds;
- Take timely action to support requests for any additional guard services coordinated between the FEMA ATR and FPS COTR;
- Notify the FEMA ATR of deductions made in accordance with FPS's Invoicing Process under the Invoice Consolidation Initiative;
- Until such time that FEMA COs may receive limited access to associated contracts through the Enterprise PRISM Instance, provide the FEMA Office of Acquisition Management Representative with a copy of all new contracts and/or task orders awarded under this agreement within the timeline prescribed in section 10 below. FEMA will provide internal distribution of all contracts to the appropriate parties.
- To the greatest extent possible, and without compromising source selection sensitive information, notify the Office of Acquisition Management Representative of the name of proposed awardee(s) for all new contracts in advance of the award/service start date;
- Where applicable, provide a copy of the contractor's Transition Plan to the FEMA ATR within 48 hours of award of the associated contract(s).



5.5 FPS Contracting Officer Technical Representative (COTR): The FPS COTR is designated by the FPS CO. The roles and responsibilities of the COTR are generally, but not limited to, the following:

- Coordinate operational and administrative activities with the FEMA ATR;
- Act as the Government representative in charge of work at the site by ensuring compliance with the Contract/Task Order requirements and advise the FEMA ATR and FPS COs of nonperformance or contractor noncompliance;
- Receive new or revised post orders from the FEMA ATR and provide an immediate review and confirmation. Coordinate any changes to the post orders with the FEMA ATR within 24 hours of implementing the change;
- Make notification to the FPS COs within 24 hours of requests for temporary additional guard services;
- Coordinate with the FEMA ATR to perform surveillance of the contract security guards while on duty;
- Coordinate with the FEMA ATR to review all GSA Form 139s, Security Guard Operations Logs, and GSA Form 3155s from the contractor;
- Conduct audits and inspections utilizing GSA Form 2820 as needed to identify any instances of contractor violation of contract requirements. Document findings on inspection reports utilizing GSA Form 2820 and take immediate action to remedy any issues identified;
- In coordination with the FEMA ATR, review the GSA Form 3155s to identify incidents that occurred during the month of performance.

## 6. **PROCEDURAL ARRANGEMENTS**

For disaster operations, the FEMA Liaison Officer shall provide the FPS Liaison Officer with as much advance notice and coordination of requirements as possible in order to ensure that requirements can be defined and FPS can determine its strategy as soon as practicable prior to the formal request and funding. Recognizing that this is not possible in advance of every disaster, when FPS cannot respond to such disasters within the timeframes required by FEMA, FEMA will determine and implement alternative means for providing the required security services. Accordingly, in the event that the FEMA Chief, Physical Security Branch or the FCO and FPS mutually determine that the services cannot be rendered by FPS as and when required, the FEMA Chief, Physical Security Branch, shall acquire such support for a period not to exceed five days or until such time that FPS can effect the necessary and appropriate guard coverage. This transition will be coordinated with the FEMA Security Division through the on-site DAE Security Manager.

## **7. FUNDING AND REIMBURSEMENT**

- 7.1 Mission Assignments Funding and Reimbursement: The FEMA response coordination entity, in coordination with the Disaster Finance Center, shall provide FPS with a specific Mission Assignment (MA) and associated funding to support disaster response activities. The MA may be issued verbally, followed by an electronic message (fax or e-mail) indicating that the signed MA document will be submitted to the affected FPS Region as soon as possible. The MA shall be accompanied by requirements that are as specific as possible to ensure that FPS can meet mission needs, yet recognizing that response activities are dynamic and may change based on emerging information and developments. FPS shall prepare the SWA based on the MA. Reimbursement shall be made based on the actual cost of performance as adjusted by the applicable administrative fee.
- 7.2 Recovery Funding and Reimbursement: It is the intention of both parties that FEMA provide funding to FPS for obligation for known and recurring requirements so that FPS can optimize its resources and acquisition strategies. As such the annual planning process noted in section 5.1 will be the primary means of supporting this intention. Funding shall therefore be provided via SWAs commensurate with the amount of services requested by FEMA, and in accordance with the anticipated performance period for the contract. The FEMA representative of the Office of Financial Management associated with a specific region/disaster shall work with the regional FPS budget analyst for resolution when specific funding for requirements is not provided in a timely manner. FPS shall make no other commitments or expenditures beyond 100% of any funds obligated. Reimbursement shall be made based on the actual cost of performance, as adjusted by the applicable administrative fee.
- 7.3 Special Terms for Stafford Act Funding: Mission Assignments and Recovery efforts are predominantly funded using Stafford Act Disaster Relief Funds. These funds are available for obligation and performance only through the period of the Presidentially Declared Major Disaster or Emergency. Contracts that use such funds cannot, therefore, extend beyond the declared disaster period. Options may be included in such contracts in anticipation of extensions to the disaster period. All acquisitions utilizing Stafford Act Funding shall comply with current legislative and/or regulatory guidance.

## **8. BILLING INSTRUCTIONS / SUPPORT DOCUMENTATION FOR EXPENDITURES**

- 8.1 FPS shall submit all requests for billing and reimbursement through the Intra-governmental Payment and Collection (IPAC) system when the work is completed or otherwise authorized. FPS shall comply with all Department of Treasury requirements to support charges, to include the required treasury fields as follows:
- ALC Transaction Contact (Technical COTR)
  - Contact Phone
  - Purchase Order Number

- Invoice Number
- Task Order Number/Modification Number
- Account Code on Task Order
- 40-1 Number
- Sender's Treasury Account Symbol
- Receiver's Department Code
- Obligating Document Number (FEMA)
- Sender's SGL Transaction
- Transaction Description (Advance or Disbursement)

- 8.2 In general, new IPAC transactions will not be initiated or accepted during the last three (3) business days of the month. Only adjustments entered or charged will be accepted. Both agencies agree to promptly discuss and resolve issues and questions regarding payments. This provision shall not preclude either party from supporting an immediate disaster-related requirement.
- 8.3 FPS must complete the total IPAC requirements stated in 8.1 above and shall include all relevant data that associates the services provided with the respective requirement. That documentation must include the Mission Assignment number; building locations; the names, dates of deployment, and location deployed; and costs of travel, lodging, and per diem. In the event that the documentation is incomplete, FEMA will implement a charge-back until FPS provides the required documentation.
- 8.4 FPS will provide FEMA with limited access to its WebView Centralized Invoice Consolidation System in order to view and/or download copies of the relevant documents and contractors' invoices. If the system is not available, then FPS shall provide copies of all such documents to the FEMA Disaster Finance Center representatives.
- 8.5 In the event that FEMA requires greater detail of the charges, FEMA will provide direct support, including funding and personnel, to support this effort.

## 9. PROJECT COMPLETION AND CLOSEOUT

- 9.1 Mission Assignments: FPS's Burlington Finance Center (BFC) should submit its final bill to the FEMA Disaster Finance Center (DFC) and the FEMA Liaison Officer no later than 90 days after completion or upon termination of an MA; contingent on FPS ensuring and certifying that all expenses have been posted and all remaining obligations have been closed. FPS may request an extension of no more than 60 days, if necessary. Remaining funds, including the prorated portion of the applicable service fees, shall be returned to FEMA after final billing is completed.
- 9.2 Recovery: The BFC shall provide a final accounting of actual costs for each recovery assignment to the FEMA DFC upon conclusion of the respective disaster. BFC will provide a final bill to FEMA DFC which, combined with the cumulative detail report of billing/expenses BFC already provides, will mark the conclusion of FPS action. Any questions on specific items listed on the detailed monthly report will be addressed by

BFC. The account will then be closed and any remaining funds will be returned to FEMA.

- 9.3 When applicable in each of the above, the FEMA Liaison Officer will notify FPS in writing when services are no longer required and provide the effective date of termination of services. In the event FEMA needs to terminate services, FEMA will be responsible for all termination costs. The BFC shall provide a final accounting of actual costs to the FEMA DFC. The associated account will then be closed and any remaining funds will be returned to FEMA.

## 10. DELIVERABLES

In addition to other deliverables called for herein, the following specifies certain recurring deliverables:

Document	Submitter	Receiver	Due Date	Marking	Format
Awarded Contract or Task Order or modifications	FPS Contracting Officer	FEMA Office of Acquisition Rep.	Within 3 Days after Award	Copy	FAR Format
GSA Form 139	Contractor	(Kept on site per the contract)	As provided by the contract	Originals maintained by contractor	GSA Form 139
Security Officer Operations Log	Contractor	FPS COTR and FEMA ATR	As provided by the contract	Originals maintained by contractor	DHS Format or as mutually determined
GSA Form 2820	FPS COTR and FEMA ATR	FPS COTR and FEMA ATR	As mutually determined between COTR/ATR	Originals	GSA Form 2820
Deduction Notice pursuant to BFC Invoice Consolidation Initiative Guidelines	FPS Contracting Officer	FEMA ATR	As required and within 24 hours	Original	E-mail
GSA Form 3155	COTR	ATR	As required and within 72 hours	Original to FPS COTR, copy to FEMA COTR	GSA Form 3155

## **11. CONTRACTOR TRANSITION / SITE VISITS / INSPECTIONS**

- 11.1 Contractor Transition Site Visit: In the event that an incumbent contractor does not receive a follow-on award, the FPS COTR will coordinate the implementation of the new contractor's transition plan with the FEMA ATR. Coordination shall include site visits as appropriate.
- 11.2 Contractor Inspections: The FPS COTR and FEMA ATR shall be responsible for ensuring that inspections are performed as detailed under their roles and responsibilities described in this Agreement and as further specified in their letters of delegation. These include, but are not limited to, 100% inspection, random sampling of deliverables, and review of customer complaints. Any corrective action proposed as a result of an inspection report shall be discussed among the parties with final direction to be provided by the Contracting Officer.

## **12. PROPERTY**

FEMA or Stafford Act funds used to purchase non-expendable property for performance of work must be authorized in advance by the FEMA Liaison Officer. FPS shall maintain an accounting of the property purchased and provide monthly property inventory reports to the FEMA Liaison Officer, including a final report within 30 days of services concluding or being terminated. All associated property shall be turned over to the FEMA Liaison Officer unless previous written agreement between FPS and an appropriate FEMA representative.

## **13. DISPUTES**

- 13.1 Should a disagreement arise as to the interpretation of the provisions of this agreement that cannot be resolved between the servicing agency's program office and the requesting agency's POC, the area(s) of disagreement will be reduced to writing by each agency and presented to the authorized officials at the respective agencies for resolution; if a settlement cannot be reached at this level, the disagreement will be raised to the next level of authority for final resolution.
- 13.2 The parties agree that, to the maximum extent practical, any dispute should not interfere with or delay the provision of disaster response services to FEMA hereunder.

## **14. PUBLIC INFORMATION**

Both FEMA and FPS, operating within their authorities, shall follow all DHS and internal processes and procedures for providing information to outside sources. FEMA and FPS shall coordinate as necessary and as practical regarding the release of information related to this agreement.

**15. OTHER PROVISIONS**

Nothing in this agreement is intended to conflict with current law or regulation or the directives of the Department of Homeland Security. If a term of this agreement is inconsistent with such authority, then that term shall be invalid; however, the remaining terms and conditions of this agreement shall remain in full force and effect.

No provision of this MOA shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341.

**16. MODIFICATION**

All modifications to this agreement shall be in writing and signed by both parties.

**17. TERMINATIONS**

This agreement is subject to cancellation or termination, with at least sixty (60) calendar days advance written notice by either party. Termination of the agreement shall not result in termination of any contracts or task orders.

**18. EFFECTIVE DATE**

The terms of this agreement will become effective upon the signature of both parties.

**19. POINTS OF CONTACT**

**19.1 For the Requesting Agency (FEMA):**

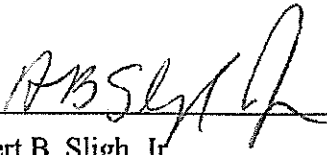
Mr. Don Pope  
FEMA Disaster Liaison  
500 C Street, S.W.  
Washington, DC 20472  
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[Don.Pope@dhs.gov](mailto:Don.Pope@dhs.gov)

Mr. Larry Mazur  
Gulf Coast Security Liaison  
500 C Street, S.W.,  
Washington, DC 20472  
Office: 202-646-3280  
[Larry.Mazur@dhs.gov](mailto:Larry.Mazur@dhs.gov)

**19.2 For the Servicing Agency (FPS):**

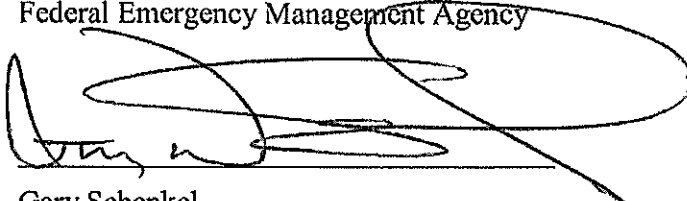
Fred Muccino  
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20. APPROVALS



Albert B. Sligh, Jr.  
Director, Office of Management  
Federal Emergency Management Agency

4/2/08  
Date



Gary Schenkel  
Director  
Federal Protective Service

4/2/08  
Date